

SUPERIOR COURT OF NEW JERSEY

HUDSON VICINAGE

CHAMBERS OF
FRANCIS B. SCHULTZ
JUDGE



WILLIAM J. BRENNAN COURTHOUSE
583 Newark Avenue
Jersey City, New Jersey 07306

Joseph B. Fiorenzo, Esq.
Sills Cummis and Gross
The legal Center
One River Front Plaza
Newark, New Jersey 07102

John Mckinney, Esq.
City of Jersey City
Department of Law
280 Grove Street
Jersey City, New Jersey 07302

April 29, 2019

Re: HUD-L-3888-18

Dear Counsel,

Please allow this letter to serve as the findings of the court regarding the counsel fee award to plaintiff.

The plaintiff seeks \$113,659.45 in counsel fees based upon 191.7 hours of attorney time plus 10.9 hours of paralegal time plus costs as the prevailing party in this "O.P.R.A." matter. Plaintiff correctly points out that counsel fees are not optional, N.J.S.A. 47:1A-6. The hourly rates requested by plaintiff are \$695 per hour for Joseph Fiorenzo, and from \$575 per hour to \$595 per hour for David Cook and Ken Oettle and \$175 - \$195 per hour for paralegal Christine

Principe. The City objects contending that the total hours are not “reasonable” and that the hourly rates are not in conformance with the appropriate legal standards.

The court will apply the “lodestar” which simply means multiplying the number of hours reasonably expended by the reasonable hourly rate. *Walker v. Giuffre* 209 N.J. 124, 130 (2012). The trial court must not accept passively the submissions of counsel but must evaluate carefully and critically the aggregate hours and specific hourly rates advanced by counsel for the prevailing party, *Id* at 131. As to the hourly rate the court is to apply the prevailing market rate in the relevant community and should include an assessment of the experience and the skill of the prevailing party’s attorney and a comparison to the rates prevailing in the community for similar services by comparable attorneys. *Id* at 132. The court must also consider whether plaintiff obtained partial or complete success *Ibid*. On the fee issue the court should also consider the factors enumerated at R.P.C. 1.5 (a) *Litton Industries v. IMO Industries* 200 NJ 372, 386 – 387 (2009). The court may also consider any “public importance” to the issue. *New Jerseyans for a Death Penalty Moratorium v. New Jersey Department of Corrections* 185 NJ 137, 158 (2005).

As to the hourly rate in the “O.P.R.A.” community the plaintiff did not cite hourly rates of any other attorneys. It merely referenced hourly (overall) for partners at other well-known New Jersey firms. The city referred to the hourly rate of attorney Walter Luers (\$335 per hour) who represented a successful “O.P.R.A.” requestor and Peter Verniero’s fee of \$350 per hour for a different but allegedly more challenging matter. That’s all the court has before it as to actual hourly rates.

The term “relevant community” allows for various interpretations. Does it mean the relevant community composed only of competent yeomanlike attorneys. Does it mean the relevant community composed only of those who provide textbook examples of pleading, brief

writing, exhibit production and how to conduct an evidentiary hearing in a factually somewhat complicated "O.P.R.A." matter. Although plaintiff's counsel seems to already know it, the court will find that everything they did in this case was indeed masterfully preformed. These were in fact three separate "O.P.R.A." matters, each with its own subsets but the manner in which it was laid out by plaintiffs counsel made it easier for the court to understand. As mentioned earlier, the experience and skill of the prevailing attorney is a factor. Based primarily on this courts knowledge of the prevailing "O.P.R.A." rates (the failure of plaintiffs counsel to cite specific rates being its only misstep) the court will set the rate at \$500 per hour for each of the attorneys. This is commensurate with the very high level of the product. The next issue in the number of hours.

The city claims that 202.6 hours is high and should be reduced to 51.6 hours, based primarily on other matters involving attorney Walter Luers. The plaintiff, while acknowledging that a great deal of time went into this matter argues that it was never interested in taking this "O.P.R.A." matter "to the limit" but was forced to do so by the city's often and inexplicable behavior. The court agrees with the plaintiff on this point.

Prior to the "O.P.R.A." complaint being filed (and thus not included in this fee application) the plaintiff acted reasonably with the city. It granted three extensions to the city, it modified its requests when asked to do so by the city and it shortened some of the time periods requested. Plaintiff did this because it was told by the city that the city was working on the request. In the end the plaintiff got absolutely nothing and had no choice but to file this "O.P.R.A." action.

The pleadings, briefs and appendices to the litigation were indeed extensive but only because the “pre complaint” aspect of the matter was extensive and had to be included in the various submissions by counsel in the litigation.

While the city claimed the document requests were overbroad and would interfere with agency operations when it first denied the “O.P.R.A.” request (pre complaint) it seemed to feel that this cursory and conclusionary response was good enough for the court when it came to its “opposition” on the return date on the order to show cause. No certification was provided by the city clerk as to exactly how these requests would substantially interfere with agency operations. No certification was provided at all!

In a technical sense the court could have simply ruled that the city “defaulted” when it came to any factual assertions and since the city bore the burden of proof in this “O.P.R.A.” matter the court would obviously have decided the matter in favor of the plaintiff. This court however, respecting the city’s position enough that it wanted the city to “have its day in court” ordered a formal hearing where the city clerk could testify in support of its position. The hearing revealed that the city made no real effort at all to locate the documents, in spite of several statements to the plaintiff that it indeed was working on the matter. The grand irony is that the court respected the city more than the city respected itself.

This Judge has reviewed the certification of counsel in support of the application item by item. The frequent use of block billing makes it difficult to know exactly how much time was spent on each issue within the block. Block billing is however not fatal to a counsel fee application. The court also recognizes as compensable the time that was spent on preparing and trying to resolve this matter as ordered by the court. It should be noted that the plaintiff was completely successful on all issues.

The key to good lawyering has always been summed up in one word: preparation. The very fine product of the plaintiff, both on paper and in court, was result of a great deal of time spent on preparation. The court cannot find any item of time that is obviously excessive or unreasonable. The court will accept the 191.7 hours of attorney time at \$500.00 per hour for a total of \$95,850.00 plus the sought paralegal fees and cost.

Counsel for the plaintiff will submit the appropriate Order under the 5 day rule.



FRANCIS B. SCHULTZ, J.S.C.